

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CAUSE NO. 3:16-CV-361 RLM
	)	(Arising out of 3:02-CR-105(03))
JOSEPH G. ULRICH (03)	)	

OPINION and ORDER

Joseph Ulrich is before the court on his motion to correct his sentence under 28 U.S.C. § 2255. Mr. Ulrich claims he is eligible for resentencing based on the United States Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015). While Mr. Ulrich's sentence was imposed in September 2003 and no appeal was taken, he filed his petition in reliance on § 2255(f)(3) within one year of the Johnson decision, making his petition timely.

A review of this case, however, shows that Mr. Ulrich isn't eligible for the relief he seeks based on Johnson. The Johnson Court ruled that the residual clause of the Armed Career Criminal Act's definition of "violent felony" was unconstitutionally vague and so requires resentencing of defendants sentenced under that clause. Mr. Ulrich wasn't sentenced as a career offender; his sentence was based on the amount of drugs he possessed with the intent to distribute (Count 1) and his use of a firearm during and in relation to a drug trafficking crime (Count 16), not on his status as a career offender or an armed career offender. Mr. Ulrich is incorrect in his assertion that his sentence on Count 16 – a mandatory minimum consecutive term of 60 months for his violation of 18

U.S.C. § 924(c) – should be set aside because “Johnson invalidates the residual clause of § 924(c)(3).” Petn., at 3. The Johnson Court invalidated the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B). Mr. Ulrich’s conviction and sentence for violating 18 U.S.C. § 924(c) was based on his use of a firearm in connection with a drug trafficking crime, not in connection with a “violent felony,” and no sentence enhancement was imposed under the Armed Career Criminal Act. Johnson has no relation to his case.

The sentence Mr. Ulrich is serving is not affected by Johnson so he isn’t entitled to the relief he seeks. The court DENIES his petition under 28 U.S.C. § 2255 to modify his sentence [docket # 86] and DENIES as unnecessary his motion to proceed *in forma pauperis* [docket # 87] in this matter.

SO ORDERED.

ENTERED: June 14, 2016

/s/ Robert L. Miller, Jr.  
Judge, United States District Court

cc: J. Ulrich